



# Crime and Punishment (Scotland) Act 1997

## 1997 CHAPTER 48

### PART III

#### PRISONERS

#### <sup>F1</sup>CHAPTER I

#### EARLY RELEASE

#### Textual Amendments

- F1** Pt. III Ch. 1 (ss. 33-41) repealed (30.9.1998) by 1998 c. 37, ss. 108, 120(2), Sch. 10; S.I. 1998/2327, art. 2(1)(w)(aa)(3)(y)

#### CHAPTER II

#### TREATMENT OF PRISONERS

#### 42 Testing of prisoners for alcohol.

After section 41B of the 1989 Act there shall be inserted the following section—

#### “41C Testing of prisoners for alcohol.

- (1) If an authorisation is in force for the prison, any officer of the prison may, at the prison, in accordance with rules under section 39 of this Act, require any prisoner who is confined in the prison, and whom he reasonably believes to

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*Changes to legislation: There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, Part III. (See end of Document for details)*

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have taken alcohol, to provide a sample of breath for the purpose of ascertaining whether he has any alcohol in his body.

(2) If the authorisation so provides, the power conferred by subsection (1) above shall include the power to require a prisoner to provide a sample of any other description specified in the authorisation, not being an intimate sample, whether instead of or in addition to a sample of breath.

(3) In this section—

“authorisation” means an authorisation by the governor; and

“intimate sample” means a sample of blood, semen or other tissue fluid, saliva or pubic hair, or a swab taken from a person’s body orifice.”

### **43 Medical services in prisons.**

(1) In section 3(1) of the 1989 Act (general superintendence of prisons) the words from “including” to the end shall cease to have effect.

(2) After section 3 of the 1989 Act there shall be inserted the following section—

#### **“3A Medical services in prisons.**

(1) Without prejudice to section 11(2) of this Act, the Secretary of State shall secure the provision of appropriate medical services within prisons.

(2) The Secretary of State may perform the duty imposed by subsection (1) above by—

- (a) appointing for a prison one or more medical officers, each of whom shall be a registered medical practitioner;
- (b) entering into an arrangement with any person for the provision of appropriate medical services in relation to any prison or prisons; or
- (c) both making any such appointment as is mentioned in paragraph (a) above and by entering such an arrangement as is mentioned in paragraph (b) above.

(3) In this section “appropriate medical services” means such services in relation to—

- (a) routine and emergency health care for prisoners; and
- (b) the provision of advice to the governor on matters related to the medical treatment and health of prisoners generally,

as the Secretary of State considers appropriate for the prison in which they are to be provided; and such services shall be provided by or under the supervision of a registered medical practitioner.

(4) Any medical officer appointed under subsection (2)(a) above shall, for the purposes of this Act, be an officer of the prison.

(5) A registered medical practitioner providing, or supervising the provision of, appropriate medical services in accordance with an arrangement made under subsection (2)(b) above shall be deemed to be a medical officer for the prison for the purposes of—

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- (a) section 27(5) of this Act (so far as that section continues to have effect by virtue of Schedule 6 to the <sup>M1</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993 (existing provisions which continue to have effect in relation to prisoners sentenced before 1st October 1993)); and
  - (b) any rules or directions made or issued under section 39 of this Act; unless such rules or directions otherwise provide or the context otherwise requires.
- (6) Subject to subsection (7) below, rules under section 39 of this Act may make provision for the governor to authorise the carrying out by officers of the prison of a search of any person who is in or is seeking to enter the prison for the purpose of providing appropriate medical services in accordance with an arrangement made under subsection (2)(b) above.
- (7) Nothing contained in rules made by virtue of subsection (6) above shall permit the governor to authorise an officer of a prison to require a person to remove any of his clothing other than an outer coat, jacket, headgear, gloves and footwear.”.
- <sup>F2</sup>(3) .....
- (4) For section 107(6) of the <sup>M2</sup>Criminal Justice and Public Order Act 1994 (medical officers in contracted out prisons), there shall be substituted the following subsections—
- “(6) Without prejudice to section 11(2) of the 1989 Act (direction by Secretary of State for prisoner to be taken hospital for treatment), the contractor shall secure the provision of appropriate medical services within the prison by—
    - (a) appointing one or more registered medical practitioners to the prison;
    - (b) entering into an arrangement with any person for the provision of such services in relation to the prison; or
    - (c) both making any such appointment as is mentioned in paragraph (a) above and entering into such an arrangement as is mentioned in paragraph (b) above.
  - (7) In subsection (6) above “appropriate medical services” means such services in relation to—
    - (a) routine and emergency health care for prisoners; and
    - (b) the provision of advice to the director on matters related to the medical treatment and health of prisoners generally,as the Secretary of State may direct or, in the absence of such a direction, as the contractor considers appropriate for the prison in which they are to be provided; and such services shall be provided by or under the supervision of a registered medical practitioner.
  - (8) In subsections (6) and (7) above “contractor”, where the contract provides for the running of prison by a sub-contractor, means that sub-contractor.”.
- (5) In section 110 of that Act (application of enactments)—
- (a) in subsection (3), after the word “sections” there shall be inserted the words “3A(6) (power to authorise searches of persons providing medical services), ”;

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- (b) in subsection (4), after the word “sections” there shall be inserted the words “3A(6) (power to carry out searches of persons providing medical services),”;
- (c) after subsection (4) there shall be inserted the following subsection—
  - “(4A) A registered medical practitioner appointed to a contracted out prison or providing, or supervising the provision of, appropriate medical services in accordance with an arrangement made under section 107(6)(b) of this Act shall be deemed to be a medical officer for the prison for the purposes of—
    - (a) section 111(3)(c) of this Act;
    - (b) section 27(5) of the 1989 Act (so far as that section continues to have effect by virtue of Schedule 6 to the <sup>M3</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993 (existing provisions which continue to have effect in relation to prisoners sentenced before 1st October 1993)); and
    - (c) any rules or directions made or issued under section 39 of the 1989 Act,
 unless such rules or directions otherwise provide or the context otherwise requires.”; and
  - (d) in subsection (6), after the word “Sections” there shall be inserted the words “3A(1) to (5)(medical services),”.
- (6) In section 112(4) of that Act (contracted out functions at directly managed prisons)—
  - (a) before paragraph (a) there shall be inserted the following paragraph—
    - “(aa) section 3A(6) and (7) of the 1989 Act (searches of persons providing medical services);”;
  - (b) in paragraph (a) for the words “the 1989” there shall be substituted the word “that”.

#### Textual Amendments

**F2** S. 43(3) repealed (31.8.2015) by [The Public Services Reform \(Inspection and Monitoring of Prisons\) \(Scotland\) Order 2015 \(S.S.I. 2015/39\)](#), art. 1, [Sch. para. 6\(a\)](#)

#### Marginal Citations

**M1** 1993 c.9.  
**M2** 1994 c.33.  
**M3** 1993 c.9.

## 44 Unlawful disclosure of information.

- (1) After section 41B of the 1989 Act there shall be inserted the following section—

### “41D Unlawful disclosure of information by medical officer.

- (1) This section applies to—
  - (a) a registered medical practitioner appointed under paragraph (a) of section 107(6) of the <sup>M4</sup>Criminal Justice and Public Order Act 1994 (medical services in contracted out prisons);

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- (b) a registered medical practitioner providing appropriate medical services under an arrangement entered into under section 3A(2)(b) of this Act or paragraph (b) of the said section 107(6); and
  - (c) any person acting under the supervision of such a practitioner.
- (2) Any person to whom this section applies who discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information relating to a particular prisoner which he has acquired in the course of carrying out his duties shall be guilty of an offence.
- (3) A person guilty of an offence under subsection (2) above shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.”.

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**Marginal Citations**

**M4** [1994 c.33.](#)

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